

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Raphael Mendez,

Plaintiff,

v.

**ORDER**

Civil No. 15-3732 ADM/BRT

S. Stanton, Chief of Psychiatry, MD;  
B. Glavinovich, Physician Assistant; and  
Any Other Unknown Supporters at FMC  
Rochester, Minnesota,

Defendants.

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Raphael Mendez, *Pro Se*.

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**I. INTRODUCTION**

This matter is before the undersigned United States District Judge for a ruling on Plaintiff Raphael Mendez's Objections [Docket No. 5] to Magistrate Judge Becky R. Thorson's November 20, 2015 Report and Recommendation [Docket No. 4] ("R&R"). In the R&R, Judge Thorson recommends summarily dismissing Mendez's action. The R&R additionally recommends denying Mendez's Application to Proceed *In Forma Pauperis* [Docket No. 2] ("IFP Application"). After a thorough de novo review of the record and for the reasons stated below, Mendez's Objections are overruled and Judge Thorson's R&R is adopted.

**II. BACKGROUND**

On September 25, 2015, Raphael Mendez, a civil detainee at the Federal Medical Center in Rochester, Minnesota, filed the instant complaint [Docket No. 1], alleging that Dr. S. Stanton and Physician Assistant Bea Glavinovich acted with deliberate indifference to his medical needs. See Compl. The gravamen of Mendez's complaint is that the named defendants failed to

property treat Mendez's ringworm infection. Judge Thorson reviewed Mendez's complaint and concluded that Dr. Stanton's decision to override Physician Assistant Glavinovich and prescribe Mendez a different medical cream for treatment, which required Mendez to wait each day in the pill line because the new medication was not prescribed as self-carry, does not arise to a constitutional violation. Under the authority of 28 U.S.C. § 1915(e)(2)(B)(ii) as recognized in Higgins v. Carter, 258 F.3d 797, 800 (8th Cir. 2001), Judge Thorson recommended Mendez's complaint be summarily dismissed for failure to state a claim. Mendez timely objected.

### **III. DISCUSSION**

#### **A. Standard of Review**

A party "may file and serve specific written objections to a magistrate judge's proposed findings and recommendations." D. Minn. L.R. 72.2(b)(1). In reviewing a magistrate judge's report and recommendation, the district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); see also D. Minn. L.R. 72.2(b). A district judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

#### **B. Mendez's Objections**

Mendez does not object to the factual recitation in Judge Thorson's R&R. Nor does Mendez object to the legal analysis underpinning Judge Thorson's conclusion that Mendez's complaint fails to state a claim. Rather, Mendez objects to Judge Thorson's decision to recommend denying the complaint without any consultation or input from the defendants accused of violating Mendez's constitutional rights. Mendez also objects to not being provided

with a docket number for this lawsuit.

Mendez's first objection lacks merit. As Judge Thorson correctly observed, Mendez's allegations do not entitle him to relief. In making her conclusion, Judge Thorson accepted Mendez's portrayal of the events depicted in the complaint as true. After doing so, Judge Thorson determined that Mendez's allegations do not demonstrate that the defendants were deliberately indifferent to his medical needs. Since the defendants' account of the events would only serve to undermine Mendez's allegations, if Mendez's allegations alone are insufficient to state a cause of action, consideration of the defendants' argument is not needed prior to dismissing the complaint.

Mendez's additional objection about not assigning a docket number is also an insufficient reason to reject Judge Thorson's R&R. Mendez's complaint is recommended for dismissal because the factual allegations do not plead a plausible cause of action. Mendez's failure to be notified about a docket number in this matter, even if true, does not alter the conclusion that Mendez's constitutional rights were not violated.

#### IV. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Mendez's Objections [Docket No. 5] to Magistrate Judge Becky R. Thorson's Report and Recommendation [Docket No. 4] are **OVERRULED**;
2. The Report and Recommendation is **ADOPTED** in full and this action is **SUMMARILY DISMISSED** under 28 U.S.C. § 1915(e)(2)(B);

3. Mendez's Application to Proceed *In Forma Pauperis* [Docket No. 2] is **DENIED**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

BY THE COURT:

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: January 6, 2016.